FILED
OCT 29 1993
OFFICE OF THE CLERK

No. 93-520

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

GEOFFREY, INC.,

Petitioner,

v.

SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of South Carolina

BRIEF FOR THE INTERNATIONAL FRANCHISE ASSOCIATION, AS AMICUS CURIAE SUPPORTING PETITIONER

STEPHEN W. SCHWAB
Counsel of Record
LEWIS G. RUDNICK
NICHOLAS R. MINEAR
RUDNICK & WOLFE
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601
(312) 368-4000

Counsel for Amicus Curiae

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

BEST AVAILABLE COPY

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
INTEREST OF THE AMICUS CURIAE	1
SUMMARY OF ARGUMENT	4
ARGUMENT	7
I. THIS COURT SHOULD DECIDE WHETHER A LICENSE OF INTANGIBLE PROPERTY THAT IS USED IN A STATE SATISFIES THE NEXUS REQUIREMENTS OF THE DUE PROCESS CLAUSE AND THE COMMERCE CLAUSE	7
A. The Lower Court's Conclusion Would Vastly Expand the Rights of States to Tax Companies that Have No Contact with the Taxing State	7
B. The South Carolina Supreme Court Did Not Justify a South Carolina Situs for the Intangible Property of Geoffrey	9
II. THE SOUTH CAROLINA SUPREME COURT'S DECISION TO PERMIT STATE TAXATION OF COMPANIES THAT IMPOSE NO COSTS ON AND DERIVE NO BENEFITS FROM A TAXING STATE EMASCULATES THE DUE PROCESS AND COMMERCE CLAUSE REQUIREMENTS THAT A STATE TAX MUST BE RELATED TO SERVICES FURNISHED BY THE TAXING STATE	13
III. THIS COURT SHOULD DECIDE WHETHER THE PHYSICAL-PRESENCE TEST ARTICULATED IN *QUILL* APPLIES TO STATE CORPORATE INCOME TAXES	15
CONCLUSION	16

TABLE OF AUTHORITIES

CASES:	PAGE
AAMCO Transmissions, Inc. v. Taxation & Revenue Dep't, 600 P.2d 841 (N.M. Ct. App. 1979), *cert. denied*, 598 P.2d 1165 (N.M. 1979)	8
American Dairy Queen Corp. v. Taxation & Revenue Dep't, 605 P.2d 251 (N.M. Ct. App. 1979) .	8
Asahi Metal Indus. Co., Ltd. v. Superior Court of California, Solano County, 480 U.S. 102 (1987)	15
Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977)	5, 8, 13, 14
International Harvester Co. v. Wisconsin Dep't of Tax., 322 U.S. 435 (1944)	8
International Shoe Co. v. Washington, 326 U.S. 310 (1945)	15
Milliken v. Meyer, 311 U.S. 457 (1940)	15
Moorman Mfg. Co. v. Bair, 437 U.S. 267 (1978) ..	5
Quill Corp. v. North Dakota ex rel. Heitkamp, 112 S.Ct. 1904 (1992)	5-7, 13-16
Southern Express Co. v. Spigener, 110 S.E. 403 (S.C. 1920)	11
Virginia v. Imperial Coal Sales Co., Inc., 293 U.S. 15 (1935)	10
Wheeling Steel Corp. v. Fox, 298 U.S. 193 (1936) .	10, 11

STATUTES:	
U.S. CONST. amend. XIV, §1	4
U.S. CONST. art. I, §8, cl. 3	4

No. 93-520

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

GEOFFREY, INC.,

Petitioner,

v.

SOUTH CAROLINA DEPARTMENT
OF REVENUE AND TAXATION,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of South Carolina

BRIEF FOR THE INTERNATIONAL FRANCHISE ASSOCIATION, AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE AMICUS CURIAE

The International Franchise Association ("IFA") is a trade association of more than 600 franchising company members, representing over 60 industries, in many of which franchising is the predominant method of distribution of goods and services. IFA members are franchisors of a large majority of the franchised service businesses in the United States. Franchise networks of products and services currently account for more than $800 billion of

annual sales (about one-third of total retail sales) and more than 500,000 businesses. Franchisors and their franchisees employ eight million people. The largest franchisors have more than 5,000 outlets, the smallest under 10. The great majority of the approximately 2,500 franchisors operating in the United States are small companies, with fewer than 50 franchised outlets.

Franchising is a highly successful business relationship. Central to the relationship between a franchisor and its franchisees is a shared trade identity. This shared trade identity is established and maintained by the franchisor's license of its trademark, trade dress and other intellectual property (*i.e.*, intangible property) to each of its franchisees. Thus, each of the hundreds of thousands of franchise relationships that exist in the United States involves a license of intangible property. The great majority of those licenses cross state lines.

Most franchisors own no property in the states in which their franchisees operate, do not maintain offices there and employ no residents of those states. A franchisor's employees may make occasional visits to its franchisee's place of business to assist the franchisee in opening his business and to inspect the franchisee's performance and furnish advice and guidance, but the duration of such visits normally is a few hours. The services that a franchisor furnishes to its franchisees, and communication among a franchisor and its franchisees, are implemented almost entirely at the franchisor's principal offices and through interstate communications media. Most franchisors do not rely on the states of their franchisees' domicile for any services and impose no costs on these states.

The franchise relationship has evolved over the last half century on the basis that the franchisor is not subject to

state income taxes (other than those imposed by the franchisor's domicile) on the royalty income paid to the franchisor by franchisees located in a different state. Prior to the late 1980's, with rare exception, the states have not sought to tax such income, unless the franchisor clearly established a traditional nexus by owning or leasing real estate, operating its own outlets, or maintaining an office or employees in the taxing state. The pricing of franchises has developed on the basis that the franchisor's net income will be taxed only by its state of domicile. If every state where a franchisor has granted franchises may tax its income attributable to that state, the franchisor will be subject to costly compliance burdens and overlapping taxes that were not anticipated by the franchisor when it entered into long-term agreements (typically 10 to 20 years), which cannot be adjusted to reflect the higher costs and burdens it will incur.

In the past several years, a number of states have asserted that out-of-state franchisors are subject to the state's tax on income earned by the franchisor from franchisees operating within the state. The decision of the South Carolina Supreme Court,[1] and the disposition of the instant Petition for a Writ of Certiorari, is being widely and carefully watched by many states and the Multistate Tax Commission. *See* Petition for a Writ of Certiorari, Appendix D. The states will read a denial of that Petition as a green light to greatly expand their right to tax out-of-state licensors of intangible property used within their borders, entirely without regard to the presence of

[1] The South Carolina Supreme Court's opinion in this case is printed as Appendix A to the Petition for a Writ of Certiorari filed with the Court in this case. References to the lower court's opinion are designated "App. A" followed by a page reference.

any other contact between the licensor and the state or whether the taxing state furnishes any benefits or services to such licensor. The magnitude of the resulting financial impact on thousands of American businesses would be immense.

Pursuant to Rule 37.2 of the Rules of this Court, IFA respectfully submits this brief as *amicus curiae* in support of Petitioner. Because IFA's members are licensors of intangible property, IFA has a substantial interest in the outcome of this case and is able to provide an additional and broader perspective on the issues presented. IFA believes this brief will assist the Court in analyzing and resolving these issues. The parties have consented to the filing of this brief, and their written consents have been filed with the Clerk of Court.

SUMMARY OF ARGUMENT

In the decision below, the South Carolina Supreme Court diminished to the vanishing point the limitations imposed by the Due Process Clause (U.S. CONST. amend. XIV, §1) and the Commerce Clause (U.S. CONST. art. I, §8, cl. 3) on the authority of states to impose income taxes on persons engaged in interstate commerce. This decision radically expands the classes of persons, relationships and transactions subject to state income taxation. The opinion has enormous implications for the many thousands of businesses engaged in interstate franchising and licensing of intangible property, a rapidly expanding part of the American economy. It will subject licensors of intangible property in interstate commerce to income taxation by every state in which goods or services exploiting the licensed intangible property are sold. This result is a radical departure from the current understanding of the reach of state

taxing authority. If allowed to stand, the decision will significantly increase the tax liabilities and burdens of compliance of thousands of American businesses to an extent that could not have been foreseen. Unless reviewed by this Court, the continuing uncertainty with respect to these issues will impose high costs on companies forced to operate in an environment in which their state tax liabilities are unclear.

The South Carolina Supreme Court has held that the mere presence of intangible property satisfies the "minimum connection" requirement under the Due Process Clause and the "substantial nexus" requirement under the Commerce Clause for the imposition of state income tax. In reaching this conclusion, the court relied as its sole authority on two lower-court New Mexico opinions from 1979 that have not since been followed by any other court. The court also assumed, without supporting rationale, that intangible property used by a licensee in a state constitutes property of the licensor having a legal situs in that state, thus establishing the requisite nexus for the state to tax the licensor. This far-reaching expansion of current state authority to tax interstate commerce should not become accepted law without review by this Court.

The South Carolina Supreme Court also articulated an essentially meaningless test for the Due Process Clause requirement that taxes imposed must be related to "values connected with the taxing State" (*Quill Corp. v. North Dakota ex rel. Heitkamp*, 112 S.Ct. 1904, 1909-10 (1992) (quoting *Moorman Mfg. Co. v. Bair*, 437 U.S. 267 (1978))), and the Commerce Clause requirement that taxes must be "fairly related to the services provided by the State" (*Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977)), by holding that the requirements are met with respect to a licensor if the state furnishes values and

benefits to its licensee operating within the state. Every state tax will pass this test, for every licensee of intangible property will derive some benefits and services from the state in which it operates. The effect of the South Carolina Supreme Court's interpretation is to write out of the Due Process and Commerce Clauses any meaningful limitations on the authority of states to impose taxes on out-of-state businesses that derive no values or services from the taxing state, significantly altering the current understanding of the parameters of state taxing authority. The rationale articulated by the South Carolina court is also fundamentally unfair, because it permits a state to tax an out-of-state business that imposes no costs on the state and derives no benefits or services from the state. The South Carolina Supreme Court's decision should not be allowed to stand without scrutiny by this Court.

IFA supports the Petitioner's argument that this Court should decide whether the physical-presence standard reaffirmed by this Court in *Quill* applies to state corporate income taxes. *See* Petition for a Writ of Certiorari Argument I at 10-14.

The decision below introduces rationales that greatly expand the constitutional power of states to tax interstate commerce and raise issues of great importance under both the Due Process and Commerce Clauses. The issues have enormous significance for a large and growing segment of American business. These are compelling reasons for this Court's review.

ARGUMENT

I. THIS COURT SHOULD DECIDE WHETHER A LICENSE OF INTANGIBLE PROPERTY THAT IS USED IN A STATE SATISFIES THE NEXUS REQUIREMENTS OF THE DUE PROCESS CLAUSE AND THE COMMERCE CLAUSE

In holding that the mere presence of intangible property in a state establishes the requisite constitutional nexus for the state to tax the owner of such property, the South Carolina Supreme Court greatly extended the reach of state taxing authority beyond its currently-accepted limits. Even if such an extension could be justified, the decision failed to establish a South Carolina situs for the intangible property of Geoffrey, Inc. ("Geoffrey").

A. The Lower Court's Conclusion Would Vastly Expand the Rights of States to Tax Companies that Have No Contact with the Taxing State

The South Carolina Supreme Court concluded that the "minimum connection" required by the Due Process Clause as well as the "substantial nexus" required by the Commerce Clause is established by the mere presence of intangible property in the state. App. A at 5a and 9a.[2] The

---

[2] In analyzing the authority of South Carolina to tax Geoffrey under the Due Process Clause of the 14th Amendment of the U.S. Constitution, the South Carolina Supreme Court quoted *Quill*, that the standard for taxation under the Due Process Clause requires (i) "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax", and (ii) that the "income attributed to the State for tax purposes must be rationally related to values connected with the taxing State." App. A at 4a, quoting *Quill*, 112 S.Ct. at 1909-10. The court also analyzed the application of the South Carolina income tax to Geoffrey under the Commerce Clause, interpreting the law as

(Footnote continued on following page)

court, however, did not provide any reasoning to support this conclusion.[3] The court thus has significantly expanded the authority of states to tax thousands of businesses in a broad range of interstate relationships and transactions. By its terms, the decision authorizes South Carolina to tax the income of an athlete with no connection to South Carolina, who has licensed a sporting goods company to manufacture and sell equipment bearing the athlete's name, solely on the basis that the equipment is sold through retail outlets located in South Carolina. Similarly, the decision permits South Carolina taxation of an out-of-state playwright whose copyrighted work is performed in South Carolina. Licensors of intangible property now

---

[2] *continued*

follows: a tax will not violate the Commerce Clause provided the tax "(i) is applied to an activity with a substantial nexus with the taxing state, (ii) is fairly apportioned, (iii) does not discriminate against interstate commerce, and (iv) is fairly related to the services provided by the state." App. A at 9a (citing *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977)).

[3] The court did refer to three cases: *American Dairy Queen Corp. v. Taxation & Revenue Dep't*, 605 P.2d 251 (N.M. Ct. App. 1979); *AAMCO Transmissions, Inc. v. Taxation & Revenue Dep't*, 600 P.2d 841 (N.M. Ct. App. 1979), *cert. denied*, 598 P.2d 1165 (N.M. 1979); and *International Harvester Co. v. Wisconsin Dep't of Tax.*, 322 U.S. 435 (1944). Both the *American Dairy Queen* and *AAMCO Transmissions* cases were decisions of lower courts in New Mexico. The opinion in *American Dairy Queen* offers virtually no legal reasoning in support of the permissibility of the tax at issue under the Due Process Clause or the Commerce Clause. The taxpayer in *AAMCO Transmissions* sold and leased tangible property to New Mexico residents, as well as licensed intangible property. The relevant facts in *International Harvester* were very different from those of this case, and did not involve an essentially interstate tax. In the fourteen years since the lower court decisions in New Mexico, no other court has upheld the constitutionality of a state tax based solely on the presence of intangible property in the state.

must bear state tax burdens which they have not historically borne, at great financial expense. If a tax return is not filed, no statute of limitations will limit the period for which taxes, interest and penalties may be due. The alternative, capitulating to the anticipated avalanche of state taxes on income generated by licensors of intangible property, is equally unpalatable and will severely distort the economic relationships of licensors and licensees of intangible property. Because of the far-reaching impact of the South Carolina Supreme Court's ruling, it is critical that the Court grant review of that decision.

B. The South Carolina Supreme Court Did Not Justify a South Carolina Situs for the Intangible Property of Geoffrey

Even if the presence of some intangible property in South Carolina is relevant to the authority of South Carolina to impose its income tax on Geoffrey, the South Carolina Supreme Court wrongly assumed—without supporting rationale—that Geoffrey's intangible property (*i.e.*, an account receivable and a franchise) had a situs in South Carolina. App. A at 5a. As demonstrated below, this assumption is not supported by established law.

The South Carolina Supreme Court found that because the royalties payable by Toys "R" Us, Inc. ("Toys R Us") to Geoffrey under their license agreement were paid once a year, the royalties accrued during the year and created an account receivable for Geoffrey. Granted, the debtor, Toys R Us, does business in South Carolina and the royalty is computed in part by reference to sales of Toys R Us in South Carolina. This does not, however, create intangible property with a South Carolina situs. Indeed, cases cited in the court's opinion for other purposes specifically held that the creditor's domicile or place of business

determines the situs of its accounts receivable. *See Virginia v. Imperial Coal Sales Co., Inc.*, 293 U.S. 15, 19 (1935) (holding that accounts receivable had their situs in the state in which the creditor was incorporated and had its principal office); and *Wheeling Steel Corp. v. Fox*, 298 U.S. 193, 212-13 (1936) (attributing accounts receivable of a corporation to the state of its corporate headquarters). In the end, the South Carolina Supreme Court's analysis of Geoffrey's accounts receivable as justifying nexus to tax will subject creditors to income taxation by every state in which their debtors conduct business.

In an attempt to establish a nexus with South Carolina for Due Process and Commerce Clause purposes, the South Carolina Supreme Court independently determined that Geoffrey maintained a franchise in South Carolina. Although the court cited several cases rejecting the doctrine that a corporation's intangible property necessarily has as its situs the state of incorporation, the court did not provide any reasoning or persuasive legal authority for placing the situs of Geoffrey's franchise in South Carolina. The court cited to *Wheeling Steel*, but that case does not support South Carolina as the situs for Geoffrey's intangible property. In *Wheeling Steel*, the Court held that for state property tax purposes, the accounts receivable of a Delaware corporation had a situs in West Virginia, which was the location of the general business offices, books, records and management functions of the corporation. The Court stated:

> [I]t cannot properly be said that the credits arise either where the goods are manufactured or the sales offices where the orders are taken . . . . Here, the tax is a property tax on the accounts receivable, as separate items of property, and these are not to be regarded as parts of the manufacturing plants where the goods sold are produced.

298 U.S. at 212-13. Comparing Geoffrey's business to that reviewed in *Wheeling Steel*, Wheeling Steel's manufacturing plants and sales offices, although within the same corporation, are most closely analogous to the Toys R Us retail outlets. Just as the situs of Wheeling Steel's accounts receivable was the location of the corporation's management offices, where the contracts generating the accounts receivable are accepted and the payments are made, so the location of Geoffrey's corporate headquarters and management functions is the proper situs for its intangible property, not the location of the sales that are the source of revenues for payments under the license agreement.

The court below also cited another inapposite case, *Southern Express Co. v. Spigener*, 110 S.E. 403 (S.C. 1920), as holding that the situs of intangible property is within the state where the right afforded by it is exercised. App. A at 7a. *Southern Express* involved the taxation of a company that had contracted for the right to use certain intangible property and used that property in South Carolina. The plaintiff (taxpayer) in *Southern Express* was in effect a licensee of intangible property, similar to Toys R Us. The court in *Southern Express* held that the rights under the license were property of the licensee located in South Carolina. Thus, the holding of *Southern Express* supports taxing Toys R Us, but not Geoffrey, as a user of intangible property in South Carolina.

The IFA respectfully submits that the situs of the intangible property of a licensor of such property should be considered located in the jurisdiction where its management activities occur, where it receives payment for use of the property, where it negotiates or enters into contracts that generate revenue attributable to the property, or where it performs the activities that create and main-

tain the value of the property. Such activities include advertising, product development and testing, and maintaining a disciplined, competitive business system which enhances the value of the licensees' businesses. In most cases, these activities are performed by the licensor at its principal office, rather than in the locale of a licensee. In many cases, as with Geoffrey, the licensor has no contact with the state of the licensee.

In a typical franchise relationship, the activities a franchisor performs in the franchisee's state are limited to assistance in initially opening the franchisee's business and occasional visits to the franchisee's place of business. The duration of such visits is normally a few hours. The overwhelming majority of the franchisor's activities, as measured by time or value, are performed at the franchisor's principal office and through interstate communications media. To the extent that a franchise generates revenue for the franchisor, those revenues arise from the activities of the franchisor that create and maintain the value of the franchise. The geographic location in which those activities are performed should determine the jurisdiction to tax the revenues generated by them. The use of intangible property by a franchisee in its state of residence may support the right of that state to tax the franchisee, but it does not establish a situs for this property in the state of the franchisee for purposes of taxing the franchisor.

The importance of this issue to franchisors and to a broad range of other business relationships built around intangible property cannot be doubted. It is critical to those businesses that the Court address this issue.

II. THE SOUTH CAROLINA SUPREME COURT'S DECISION TO PERMIT STATE TAXATION OF COMPANIES THAT IMPOSE NO COSTS ON AND DERIVE NO BENEFITS FROM A TAXING STATE EMASCULATES THE DUE PROCESS AND COMMERCE CLAUSE REQUIREMENTS THAT A STATE TAX MUST BE RELATED TO SERVICES FURNISHED BY THE TAXING STATE

One of the two tests that a state tax must meet to avoid violating the Due Process Clause is that the "income attributed to the State for tax purposes must be rationally related to values connected with the taxing State." *Quill*, 112 S.Ct. at 1909-10. Similarly, to avoid violating the Commerce Clause, a state tax must be "fairly related to the services provided by the State". *Complete Auto Transit*, 430 U.S. at 279. The South Carolina Supreme Court held that both of these tests were satisfied by South Carolina "providing an orderly society in which Toys R Us conducts business, . . . [making] it possible for Geoffrey to earn income pursuant to the royalty agreement." App. A at 8a.

The court's interpretation of these elements of the Due Process Clause and Commerce Clause tests renders them meaningless. The requisite state-provided benefits are identified by the court as *various benefits provided to Toys R Us, not Geoffrey*. In other words, South Carolina has provided value and services to Geoffrey exclusively by providing value and services to Toys R Us, with whom Geoffrey has contracted, thereby allowing Toys R Us to generate revenues to meet its contractual obligations to Geoffrey. If services and benefits furnished to Toys R Us, the licensee of intangible property, can properly be considered services provided by South Carolina to Geoffrey, the licensor, South Carolina can assert that it furnishes services and benefits to every person receiving income that at any point in the chain of commerce passed through

the hands of a South Carolina resident, who benefits from the "orderly society" that South Carolina maintains. Although Geoffrey is only once removed from the party actually doing business in South Carolina, the same benefit would accrue to Geoffrey even if there were one or more unrelated, out-of-state intermediaries between Toys R Us and Geoffrey. The benefit of "providing an orderly society" is such a vague and amorphous service that it will exist in every case in which a taxing state's resident has earned income from business activity in the state (which is separately taxed by the state), out of which the resident makes a payment to an out-of state licensor. The South Carolina Supreme Court's rule thus emasculates the separate prongs of the Due Process Clause (requiring a rational relation to values connected with the taxing state) and the Commerce Clause (requiring a tax to be fairly related to the services provided by the state). *See Quill*, 112 S.Ct. at 1909-10, and *Complete Auto Transit*, 430 U.S. at 279.

Certainly more concrete, specific values and services can be identified within the concept of providing an orderly society, such as maintaining roads, sewers and police protection, but all of these more specific benefits can be clearly seen as applying only to Toys R Us, the licensee, and not to Geoffrey, the licensor. The only activities that a licensor may conduct in the state of its licensee are brief, periodic visits. Many licensors of intangible property have no contact whatsoever with the states where their intangible property is used. In most cases, the licensor does not maintain an office or other business location, own any property or employ any residents in the state of its licensee. Accordingly, the licensor derives no benefit from the services furnished by the state and local governments of the licensee's jurisdiction, and imposes no cost on these jurisdictions.

As applied by the South Carolina Supreme Court, the prongs of the Due Process Clause and the Commerce Clause relating taxation to values and services provided by the taxing state become tests that every state tax will meet in every instance. The effect is to write these separate, independently significant barriers to taxation completely out of the law. The South Carolina Supreme Court would permit state taxation of persons who impose no burdens on and derive no benefits from the taxing state. Such a change in the law would significantly expand the authority of states to tax the many thousands of businesses engaged in interstate transactions. Licensors of intangible property should not be subjected to taxation by states on which they impose no costs and from which they derive no benefits, without a determination by the Court that such taxation is consistent with "traditional notions of fair play and substantial justice."[4] For these reasons, it is incumbent on this Court to review the decision of the court below.

III. THIS COURT SHOULD DECIDE WHETHER THE PHYSICAL-PRESENCE TEST ARTICULATED IN *QUILL* APPLIES TO STATE CORPORATE INCOME TAXES

IFA adopts in its entirety the argument of Petitioner under the heading "I. THIS COURT SHOULD RESOLVE THE QUESTION WHETHER *QUILL'S* 'BRIGHT-LINE PHYSICAL-PRESENCE' STANDARD APPLIES TO STATE CORPORATE INCOME TAXES," found at pages 10-14 of the Petition for a Writ of Certiorari.

---

[4] *Asahi Metal Indus. Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 113 (1987) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940))).

CONCLUSION

The decision of the court below would substantially extend the reach of state taxing powers to companies having no contact with the taxing state by interpreting significant constitutional limits on these powers so narrowly as to effectively eliminate them. In addition, this case squarely presents for decision an important issue left unresolved by *Quill*, *i.e.*, whether the physical-presence test reaffirmed by *Quill* applies to state taxes other than sales and use taxes. Many thousands of businesses will be significantly affected by the resolution of these issues and are highly vulnerable to continuing uncertainty and substantial tax and compliance burdens in the absence of guidance from this Court. For these reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

STEPHEN W. SCHWAB
Counsel of Record
LEWIS G. RUDNICK
NICHOLAS R. MINEAR
RUDNICK & WOLFE
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601
(312) 368-4000
Counsel for Amicus Curiae